

SUBMITTED BY:

Brandon J. Mark (041613)  
Michael W. Young (admitted Pro Hac Vice)  
PARSONS BEHLE & LATIMER  
201 South Main Street, Suite 1800  
Salt Lake City, Utah 84111  
Telephone: 801.532.1234  
Facsimile: 801.536.6111  
[bmark@parsonsbehle.com](mailto:bmark@parsonsbehle.com)  
[myoung@parsonsbehle.com](mailto:myoung@parsonsbehle.com)  
[ecf@parsonsbehle.com](mailto:ecf@parsonsbehle.com)

*Attorneys for Plaintiff*

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

EUGENE DIVISION

**NICOLE GILLAND, AN INDIVIDUAL,**

Case No. 6:19-cv-00283-MK

Plaintiff,

vs.

**SOUTHWESTERN OREGON  
COMMUNITY COLLEGE DISTRICT BY  
AND THROUGH ITS BOARD OF  
EDUCATION, AN OREGON COMMUNITY  
COLLEGE DISTRICT AND BOARD;  
SOUTHWESTERN OREGON  
COMMUNITY COLLEGE, AN OREGON  
COMMUNITY COLLEGE,**

Defendants.

**PLAINTIFF'S CORRECTED  
JURY INSTRUCTION ON  
SELECTIVE ENFORCEMENT**

Pursuant to this Court's ruling that Plaintiff may pursue alternative theories of liability under her Title IX claim, Plaintiff re-reviewed her submitted jury instructions and realized that her proposed jury instruction defining the elements of her Title IX selective enforcement theory did not accurately reflect the law on the issue. Accordingly, Plaintiff is submitting a corrected version, with proposed additions indicated in underline.

INSTRUCTION NO.\_\_\_\_\_

TITLE IX CLAIM – SELECTIVE ENFORCEMENT ELEMENTS

Title IX is understood to bar the imposition of university discipline where gender is a motivating factor in the decision to discipline.

Under Title IX, a Defendant may be liable for violation of Title IX if the Plaintiff demonstrates that:

1. A Defendant discriminated against the Plaintiff;
2. Because of the Plaintiff's sex;
3. That the discrimination was intentional;
4. That the discrimination was a ‘substantial’ or ‘motivating factor’ for a Defendant’s actions; and
5. That, as a result, similarly situated (a) male students and/or (b) female students who conformed to gender stereotypes that Plaintiff was perceived to not conform to at Southwestern Oregon Community College were treated differently during investigations and/or disciplinary proceedings concerning plagiarism.

Authority: *Yusuf v. Vassar Coll.*, 35 F.3d 709, 715 (2d Cir. 1994); *Doe v. N.Y. Univ.*, 438 F. Supp. 3d 172, 181 (S.D.N.Y. 2020).

DATED this 21st day of June 2022.

/s/ Brandon J. Mark  
Brandon J. Mark (OSB No. 041613)  
*Attorneys for Plaintiff*

**CERTIFICATE OF SERVICE**

I hereby certify that on June 21, 2022 I electronically filed the foregoing Plaintiff's Deposition Designations with the Clerk of the Court using the CM/ECF system which will send electronic notification to all CM/ECF participants.

/s/ Brandon J. Mark